

VIOLATIONS

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8

02 JUN 27 PM 12:44

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Xcel Energy, Inc.

Pawnee (Morgan County) and
Comanche (Pueblo County) Stations,
Colorado

Proceedings Pursuant to
Section 113(a)(1) of the
Clean Air Act, 42 U.S.C.
§7413(a)(1)

Notice of Violation

Docket No. CAA-08-2002-06

NOTICE OF VIOLATION

This Notice of Violation ("NOV") is issued to Xcel Energy, Inc. ("Xcel") for violations of the Clean Air Act ("Act") at the coal-fired power plants identified below. Xcel has embarked on a program of modifications intended to extend the useful life, regain lost generating capacity, and/or increase capacity at these coal-fired power plants.

Commencing at various times since at least 1994 and continuing to today, Xcel has modified and operated the coal-fired power plants identified below without obtaining New Source Review ("NSR") Prevention of Significant Deterioration ("PSD") permits authorizing the construction and operation of physical modifications of its boiler units as required by the Act. In addition, for each physical modification at these power plants, Xcel has operated these modifications without installing pollution control equipment required by the Act. These violations of the Act and the State Implementation Plan ("SIP") of Colorado have resulted in the release of massive unpermitted and, therefore, illegal amounts of Sulfur Dioxides ("SO₂"), Nitrogen Oxides ("NOx") and/or Particulate Matter ("PM") into the environment. Until these violations are corrected, Xcel will continue to release massive amounts of illegal emissions into the environment.

This NOV is issued pursuant to §113(a)(1) of the Act, as amended, 42 U.S.C. §§7401-7671q. §113(a) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this NOV has been delegated to the Regional Administrator for EPA Region 8 and further redelegated to the Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice.



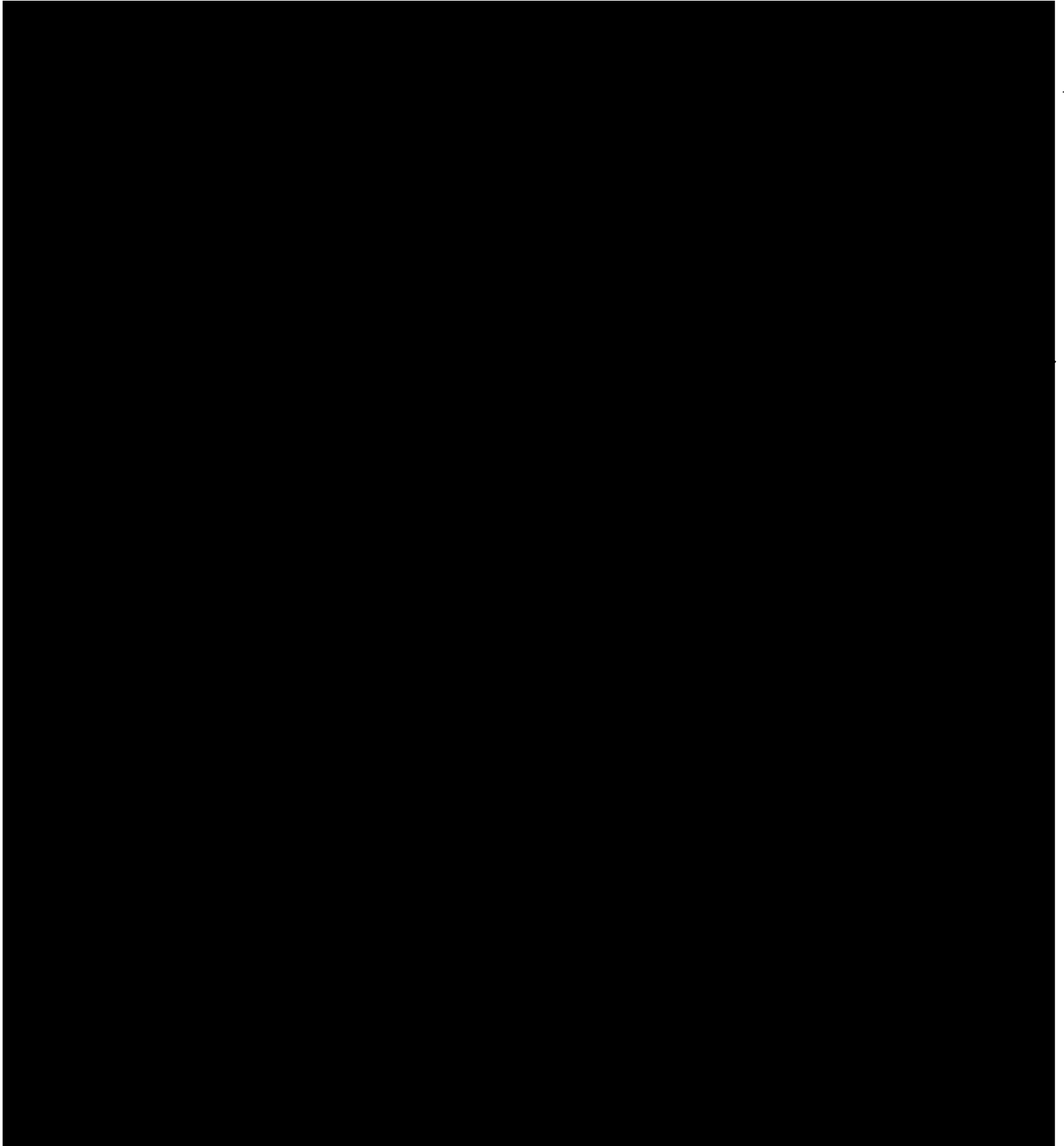
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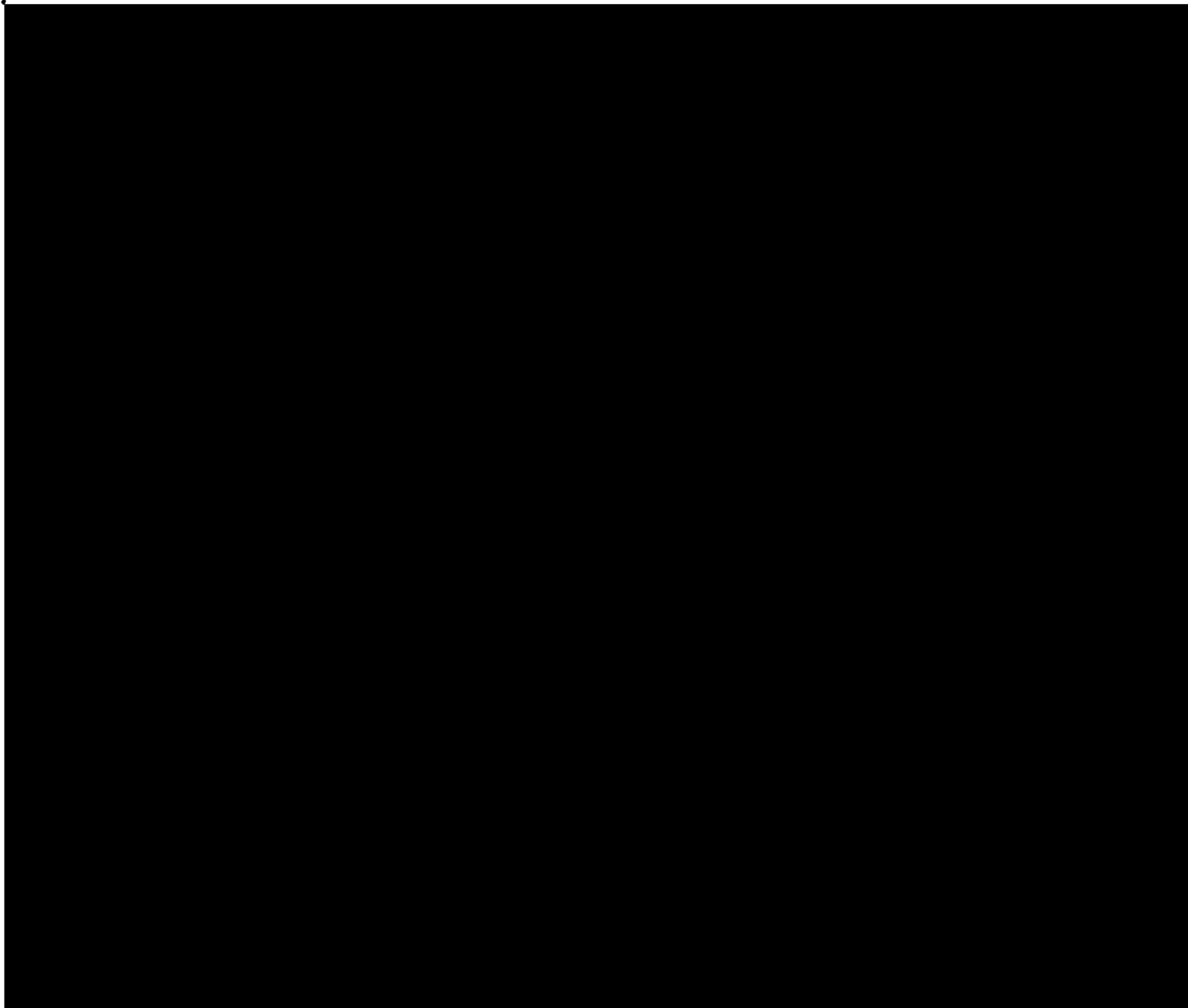
STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air Act was passed in 1970, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its projected representative actual annual emissions may increase.
2. The NSR provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. To obtain the required permit, the source must agree to install the Best Available Control Technology ("BACT") for an attainment pollutant or achieve the Lowest Achievable Emission Rate ("LAER") in a nonattainment area. Sources may not operate unless they meet the emission limits that would have been imposed by the permitting process.
3. Pursuant to Part C of the Act, the Colorado SIP requires that no construction or operation of a major modification of a major stationary source occur in an area designated as attainment without first obtaining a permit under 40 CFR § 52.21, and prohibits the operation of a major stationary source after a major modification unless the source has applied BACT pursuant to 40 CFR §52.21(j) and the Colorado SIP at Code of Colorado Regulations 5 1001-5. The PSD portion of the Colorado SIP was originally approved by EPA on 9/2/86 at 51 Fed. Reg. 31125, and amendments were later approved by EPA as follows: on 2/13/87 (52 Fed. Reg. 4622), 6/15/87 (52 Fed. Reg. 22638), 5/8/89 (54 Fed. Reg. 9780), 5/28/91 (56 Fed. Reg. 12849), 7/17/02 (57 Fed. Reg. 26997), 11/10/94 (59 Fed. Reg. 51376), 10/17/94 (59 Fed. Reg. 42500), 2/20/97 (62 Fed. Reg. 2910), 5/16/97, 62 Fed. Reg. 13332; and 4/24/98, 63 Fed. Reg. 14357. The PSD provisions of the Colorado SIP are implemented by the Colorado Air Quality Control Commission ("CAQCC") in its Air Quality Control Regulation No. 3 ("AQCR").
4. The Colorado SIP for PSD provides that no emission unit or source subject to that rule shall be constructed without obtaining an air construction permit that meets the requirement of that rule.
5. The SIP provisions identified in paragraph 3 above are all federally enforceable pursuant to §§110 and 113 of the Act.

FACTUAL BACKGROUND

6. Xcel operates the Pawnee Station, a fossil-fuel-fired electric utility steam generating plant located in Morgan County, near Brush, Colorado. The plant consists of one boiler unit with a total generating capacity of 505 megawatts that began operations in 1981.
7. Xcel operates the Comanche Station, a fossil-fuel-fired electric utility steam generating plant located in Pueblo County near Pueblo, Colorado. The plant consists of two boiler units, Unit 1 with a total generating capacity of 325 megawatts that began operation in 1973 and Unit 2 with a total generating capacity of 335 megawatts that began operation in 1975.
8. The Pawnee Station is located in an area that has the following attainment/nonattainment classifications, found at 40 C.F.R. 81.306:
 - For NO₂, the entire state has been classified as "better than national standards".
 - For SO₂, the entire state has been classified as "better than national standards".
 - For carbon monoxide ("CO"), the area has been classified as unclassifiable/attainment.
 - For ozone, the area has been classified as unclassifiable/attainment.
 - For PM10, the area has been classified as unclassifiable.
9. The Comanche Station is located in an area that has the following attainment/nonattainment classifications, found at 40 C.F.R. 81.306:
 - For NO₂, the entire state has been classified as "better than national standards".
 - For SO₂, the entire state has been classified as "better than national standards".
 - For CO, the area has been classified as unclassifiable/attainment.
 - For ozone, the area has been classified as unclassifiable/attainment.
 - For PM10, the area has been classified as unclassifiable.
10. Each of the plants identified in paragraphs 6 and 7 above emits or has the potential to emit at least 100 tons per year of NO_x, SO₂ and particulate matter and is a stationary source under the Act.

VIOLATIONS



OPPORTUNITY FOR CONFERENCE

Respondent may, upon request, confer with EPA. The conference will enable Respondent to present evidence bearing on the findings of violations, on the nature of the violations, and on any efforts Respondent may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by counsel. A request for a conference must be made within 10 calendar days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

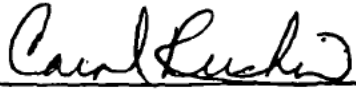
James Eppers
Enforcement Attorney
Office of Enforcement, Compliance
& Environmental Justice
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202
303-312-6893

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

EFFECTIVE DATE

This NOV shall be effective immediately upon issuance.

Date Issued: June 27th, 2002.


Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
& Environmental Justice
U.S. EPA, Region 8



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

Ref:8ENF-L

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ATTORNEY WORK-PRODUCT/
ATTORNEY-CLIENT PRIVILEGE/FOIA
EXEMPT

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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02 JUN 27 PM 12:44

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EPA REGION VIII
HEARING CLERK

Ref: 8ENF-T

JUN 26 2002

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Olon Plunk
Vice President
Environmental Services
Xcel Energy
4653 Table Mountain Drive
Golden, CO 80403

Re: Notice of Violation

Dear Mr. Plunk:

Enclosed is a Notice of Violation ("NOV") issued pursuant to Section 113(a)(1) of the Clean Air Act ("the Act"), 42 U.S.C. §7413(a)(1). The U.S. Environmental Protection Agency ("EPA") has alleged that Xcel Energy Inc., who owns and operates the Pawnee Station and Comanche Station, power plants in Morgan County and Pueblo County, respectively, has failed to comply with the Clean Air Act, Part C: Prevention of Significant Deterioration of Air Quality ("PSD"), 42 U.S.C. §§ 7470 to 7492, and the permitting requirements of Colorado Air Quality Control Commission Regulation No. 3, 5 C.C.R. 1001-5 and 40 C.F.R. Part 52.21.

Pursuant to Section 113(a)(1) of the Act, 42 U.S.C. 7413(a), any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, and/or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation on or before January 30, 1997, and no more than \$27,500 per day for each violation after January 30, 1997. Pursuant to §113(c) of the Act, 42 U.S.C. §7413(c), criminal sanction may also be imposed, to redress knowing violations of the Act. Pursuant to §306 of the Act, 42 U.S.C. 7606, federal contracts may be barred with any facility found in violation of the Act.



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Please note that the NOV outlines a procedure for the respondent to request an informal conference with EPA representatives. We urge your prompt attention to this matter.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: Doug Benevento, Environmental Programs Director
Colorado Department of Public Health and Environment

Bruce Buckheit, Director
Air Enforcement Division
US EPA Office of Enforcement and Compliance Assurance

JIM Eppers, 8ENF-L

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8

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IN THE MATTER OF:

Xcel Energy, Inc.

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Proceedings Pursuant to
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Notice of Violation

Docket No. CAA-08-2002-06

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STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air Act was passed in 1970, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its projected representative actual annual emissions may increase.
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8. The Pawnee Station is located in an area that has the following attainment/nonattainment classifications, found at 40 C.F.R. 81.306:

For NO₂, the entire state has been classified as "better than national standards".

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For carbon monoxide ("CO"), the area has been classified as unclassifiable/attainment.

For ozone, the area has been classified as unclassifiable/attainment.

For PM₁₀, the area has been classified as unclassifiable.

9. The Comanche Station is located in an area that has the following attainment/nonattainment classifications, found at 40 C.F.R. 81.306:

For NO₂, the entire state has been classified as "better than national standards".

For SO₂, the entire state has been classified as "better than national standards".

For CO, the area has been classified as unclassifiable/attainment.

For ozone, the area has been classified as unclassifiable/attainment.

For PM₁₀, the area has been classified as unclassifiable.

10. Each of the plants identified in paragraphs 6 and 7 above emits or has the potential to emit at least 100 tons per year of NO_x, SO₂ and particulate matter and is a stationary source under the Act.

VIOLATIONS

11. Xcel has made "major modifications" of the Pawnee and Comanche Stations as defined by both 40 CFR §52.21 and Colorado SIP Rules at CAQCC Regulation No. 3, Part A §I.B.36.
 - i) The major modifications at its Pawnee Station include but are not limited to the following physical or operational changes, alone or in combination: a reheater redesign and replacement in 1994, and a redesign and upgrade of the condenser tubes in 1997 to regain lost generation due to condenser tube failures.
 - ii) The major modifications at its Comanche Station include but are not limited to the following physical or operational changes, alone on in combination: a reheater redesign and replacement at Comanche Unit 2 which was completed in 1994, and a replacement and redesign of a reheater and arch wall at Comanche Unit 1 in 2000.
12. Each of the modifications resulted in a net significant increase in emissions for SO₂, NO_x, and/or PM as defined by 40 CFR §§52.21(b)(3) and (23) and Colorado SIP Rules at CAQCC Regulation No. 3, Part A, I.B.59 and Part A, I.B.37.
13. For each of the modifications identified in 11 above, Xcel did not obtain a PSD permit pursuant to 40 CFR §52.21 and Colorado SIP Rules at CAQCC Regulation No. 3, Part B. In addition, for modifications after 1992, no information was provided to the permitting agency on an annual basis for a period of five years following the date the unit resumed regular operation demonstrating that the modification did not result in an emissions increase in accordance with 40 CFR §52.21(b)(21)(v).
14. The modifications do not fall within the "routine maintenance, repair and replacement" exemption found at 40 CFR §52.21(b)(2)(iii)(a) and Colorado SIP Rules at CAQCC Regulation No. 3, Part A, I.B.36. Each of these modifications was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the modification was performed to regain lost capacity and/or availability, extend the life of the unit, and/or increase capacity and/or availability. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the Court of Appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).
15. None of the modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 CFR §52.21(b)(2)(iii)(f), or Colorado CAQCC Regulation No. 3, Part A, I.B.36. This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity.

16. None of the modifications fall within the "demand growth" exemption found at 40 CFR §52.21(b)(33)(ii) and Colorado SIP Rules at CAQCC Regulation No. 3, because for each modification a physical change was performed which resulted in an increase of representative actual annual emissions.
17. Therefore, Xcel violated and continues to violate Clean Air Act, Part C: Prevention of Significant Deterioration of Air Quality ("PSD"), 42 U.S.C. §§7470 to 7492, and the permitting requirements of Colorado Air Quality Control Commission Regulation No. 3, Part B, IV.D.3 and 40 C.F.R. §52.21, by constructing and operating modifications at the Pawnee Station and the Comanche Station without the necessary permits and by constructing and operating without the application of BACT required by the Colorado SIP.
18. Each of these violations exists from the date of start of construction of each modification until the time that Xcel obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the Colorado SIP.

ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, and/or bring a civil action pursuant to §113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation on or before January 30, 1997, and no more than \$27,500 per day for each violation after January 30, 1997. §113(c) of the Act, 42 U.S.C. §7413(c), provides that criminal sanctions may also be imposed, to redress knowing violations of the Act. §306 of the Act, 42 U.S.C. 7606, allows that federal contracts may be barred with any facility found in violation of the Act.

OPPORTUNITY FOR CONFERENCE

Respondent may, upon request, confer with EPA. The conference will enable Respondent to present evidence bearing on the findings of violations, on the nature of the violations, and on any efforts Respondent may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by counsel. A request for a conference must be made within 10 calendar days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:


James Eppers
Enforcement Attorney
Office of Enforcement, Compliance
& Environmental Justice
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202
303-312-6893

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

EFFECTIVE DATE

This NOV shall be effective immediately upon issuance.

Date Issued: June 27th, 2002.


Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
& Environmental Justice
U.S. EPA, Region 8



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

MAR - 4 2002

Ref: 8ENF-T

Mr. Olon Plunk
Vice President, Environmental Services
Xcel Energy
4653 Table Mountain Drive
Golden, CO 80403

Dear Mr. Plunk:

For the past 3 years the Environmental Protection Agency (EPA) has been conducting a series of investigations to determine whether the installation of certain components at coal fired power plants is being implemented in a manner that complies with the New Source Review provisions of Parts C and D of Title I of the Clean Air Act (herein "NSR requirements") (42 U.S.C. §§ 7470 - 7503) and the New Source Performance Standards ("NSPS") found at 40 CFR Part 60, Subpart Da. As part of these investigations, EPA has reviewed a number of modifications at the Pawnee Generating Station and the Comanche Generating Station owned and operated by Xcel Energy, Inc. (Xcel) in Colorado.

When the Clean Air Act (Act) was passed, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase. Given that the majority of coal fired power plants are more than 30 years old, one would have expected that many coal fired utilities would have undergone modification and installed modern controls in the decades that have passed since enactment of these requirements. Indeed, it appears that there has been quite substantial capital investment in grandfathered coal fired power plants. These projects have enabled electric power generation from coal fired power plants to nearly double since Congress adopted the NSR requirements. However, the operators of some of these plants did not install the controls mandated by the NSR requirements at the time these modifications were made.

Based on our review of Xcel's response to EPA's December 28, 2000, CAA §114 request for information, it appears that there have been instances where capital projects involving the replacement of key plant components have been made at the Pawnee and Comanche Generating



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Stations which resulted in increased emissions without Xcel, or its predecessor companies, Public Service Company of Colorado or New Century Energy, seeking or securing major new source review permits. In internal documents provided to EPA in Xcel's §114 response, company officials and/or contractors have represented that these projects will provide for an increase in utilization through reduction in downtime and/or an increase in generating capacity. In either case, it appears to us that such projects resulted in an increase in emissions and were not offset by the installation or upgrade of pollution control equipment or other available emission reduction strategies. Based on the documentation provided to EPA, we have identified major projects related to increased generation and coal consumption resulting in increased annual NO_x and SO₂ emissions. In several instances, the increase in emissions of SO₂ and NO_x are much greater than the 40 tons per year significance increase thresholds for SO₂ and NO_x that trigger major NSR requirements. For example, in 1994, Comanche Unit 2 replaced and redesigned the reheater because, "In short, the tube material has reached the end of its useful life", in 2000, Comanche Unit 1 completed a reheater and arch wall replacement and redesign project, and in 1997, Pawnee performed a redesign and upgrade of the condenser tubes to regain lost generation due to condenser tube failures.

The WEPCO rule (57 FR 32314, July 21, 1992) requires that the source compare projected representative future emissions to past actual emissions (an "actual to projected future actual" test) for evaluating nonexempt modifications. Where it is projected that emissions will not increase by more than the significance level, major NSR requirements are not triggered. However, in such instances the rule requires that documentation of the validity of the source's projection be furnished by submitting actual emission data for 5 years following the change. We are not aware that such documentation has been submitted for any of the modifications identified.

Based on the facts as we currently understand them, we believe that many capital projects, especially "life extension programs," do not fall within the scope of the "demand growth" exclusion found at 40 CFR 51.166(b)(32)(ii) or the "routine maintenance" exemption found at 40 CFR 52.21(b)(2)(iii). Contrary to speculation by some, our view that such projects may trigger NSR and/or NSPS requirements is not based on recent, new interpretations of the law, but on a straightforward reading of the 7th Circuit opinion in Wisconsin Electric Power Company v. EPA, 893 F.2d 901 (7th Cir. 1990), the 1992 WEPCO rule demand growth exclusion, 40 CFR 51.166(b)(21)(v) and the preamble to the WEPCO rule (57 FR 32314, July 21, 1992). The EPA has also spoken clearly on these issues in administrative determinations, including three determinations by the prior administration in the WEPCO matter. All significant EPA determinations respecting these issues are made available to the industry at the time they are made and can now be reviewed by interested members of the public, including industry representatives, via the Internet.

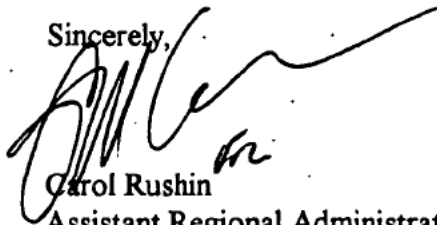
Given the significance of these issues, we are requesting a meeting with representatives of Xcel to discuss any statutory or regulatory interpretations that might suggest that these modifications do not trigger applicable NSR or NSPS requirements. We would also like to ascertain whether there are significant broad issues of fact that may be in dispute.

At such a meeting we would be prepared to outline our view of the law and discuss some

illustrative fact patterns and would expect Xcel to identify any differences in understanding of the law or facts of which it is aware. We are not proposing to debate points of proof or evidence at this meeting. In addition to providing an opportunity for EPA and Xcel to understand each other's view on legal and technical issues, we would also be prepared to put forth several concepts for resolution of any differences that may be identified and would hope to receive any thoughts Xcel may have to offer in this regard. We would hope to engage in a candid exchange of views on the issues rather than a discovery or public relations opportunity for either side. Accordingly, we would hope to reach agreement with Xcel that such a meeting would be a confidential settlement discussion subject to Rule 408, Fed. R. Evid.

This letter is not intended to serve as a Notice of Violation under the Clean Air Act, nor is it intended to affect any rights Xcel may have to request a conference with EPA officials upon receipt of a Notice of Violation. Please contact Ron Rutherford of my office at 303-312-6180 if Xcel is interested in participating in such a meeting. We would very much like to schedule this meeting at your earliest convenience. However, if we do not hear from you within 30 days of the date of this letter, we will assume that you are not interested in a meeting and will proceed with our investigation accordingly.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

cc: Doug Benevento, Environmental Programs Director
Colorado Department of Public Health and Environment

Bruce Buckheit, Director
Air Enforcement Division
US EPA Office of Enforcement and Compliance Assurance



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466



33362AIR

25/C IE

DEC 28 2000

8ENF-T

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

ORIGINATOR'S COPY

Mr. Michael J. Price, Plant Manager
Public Service Company of Colorado Pawnee Power Plant
14940 Morgan County Rd. 24 PO Box 857
Brush, CO 80723

RE: Request for Information Pursuant to
Section 114(a) of the Clean Air Act
Regarding EPA's Coal-fired Power Plant
Investigations

Dear Mr. Price:

The United States Environmental Protection Agency (EPA) hereby requires Public Service Company of Colorado to provide certain information as part of an EPA investigation to determine the Clean Air Act (CAA or the Act) compliance status of your owned and/or operated Pawnee Station, located in Brush, Colorado.

Pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of EPA is authorized to require any person who owns and/or operates an emission source to establish and maintain records, make reports and provide such other information as he may reasonably require for the purposes of determining whether such person is in violation of any provision of the Act. In order for EPA to determine whether a violation has occurred, you are hereby required, pursuant to Section 114(a) of the CAA, to provide responses to the following questions and requests for information regarding the above identified electric generating station.

EPA has reasons to believe that physical changes or changes in the method of operation may have been made at this power plant. These reasons are, in part, reflected in the enclosed graphs (see Enclosure 3) reflecting operations and expenditures at this plant since 1981. These changes may have resulted in or could in the future result in increased emissions from this plant. Therefore, you are hereby required to respond to the following questions and requests for information within the time periods specified (see Enclosure 1 for instructions and definitions).



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The Capital Appropriation Requests are to include, but not be limited to,

- 1) copies of all Capital Appropriation Requests with authorizing signatures,
- 2) equipment specifications,
- 3) project justifications,
- 4) cost/benefit analyses,
- 5) all alternative options analyses,
- 6) all proposals and price quotations submitted by equipment suppliers or contractors,
- 7) all purchase orders and/or contracts entered into that exceeded \$500,000,
- 8) copies of all correspondence from/to a contractor regarding the material being supplied to support the project that discussed changes in material type or design from the existing component(s) being replaced,
- 9) any engineering or performance test, or related documents, and
- 10) post-completion project and/or equipment guarantee evaluation that was conducted.

Additionally,

- 1) identify the dates when the work orders were completed and the equipment was returned to service,
 - 2) provide all work order project completion reports, and
 - 3) provide copies of any emissions calculations performed before and after the capital project.
4. Provide copies of the original and all subsequent boiler cross-sectional diagrams for each boiler at the station identified above.
 5. Provide original (nameplate) and all subsequent boiler design ratings for each boiler at the station identified above as follows:
 - a. Steam flow rate
 - (1) Peak
 - (2) Sustained,



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- (3) PM and PM10,
- (4) Air Toxics (Pb/Hg/HC1/Other).

7. Monthly and annual emissions (lb/mmBTU and tons/year) of the following air pollutants. Emissions information responsive to this request includes annual emissions reports submitted to the applicable state regulatory agency, and all data obtained from any continuous emission monitor (CEM) installed in the flue gas stream. [Specify the timeframes and pollutants, where emissions data has already been reported to the U.S. EPA, (i.e., Acid Rain CEM data/reports, New Source Performance Standards (NSPS) data/reports, etc.). Acid Rain CEM data that has been submitted to the EPA to comply with Title IV requirements and air emissions reports submitted to EPA to comply with applicable NSPS requirements does not have to be resubmitted to satisfy this Section 114 information request letter]:
 - (1) NO_x,
 - (2) SO₂,
 - (3) PM and PM10,
 - (4) Air Toxics (Pb/Hg/HC1/Other).
8. For each Coal Fired Boiler Unit at the station identified above, provide copies of all Prevention of Significant Deterioration/New Source Review (PSD/NSR) permit applications submitted to the state regulatory agency with a description of the modifications, and all subsequent correspondence with the state regulatory agency regarding the permit application. Also, provide copies of all PSD/NSR permits that were issued for each Coal Fired Boiler Unit at the station identified above.
9. Provide copies of all correspondence, memoranda, telephone discussion summaries, etc., with either the federal or state regulatory agency regarding PSD/NSR/NSPS applicability determinations for any modifications and/or reconstructions between 1978 and the present for each Coal Fired Boiler Unit at the station identified above.
10. List and provide all life extension/life optimization studies, evaluations, assessments and reports, including any reports and/or correspondence, etc., related to extending the life for each boiler or boiler component at the station identified above.
11. Provide the initial installed cost of each Steam Generating Unit (as defined in Attachment 1) at the station identified above.
12. Identify the total capital expenditures on an annual basis made to each Steam Generating Unit over the life of each unit at the station identified above.



A knowing submittal of false information in response to this request may be actionable under Section 113(c)(2) of the CAA, as well as 18 U.S.C. §§ 1001 and 1341. Public Service Company of Colorado should also be aware that a failure to comply fully with the terms of this request may subject it to an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413.


This letter in no way affects the obligations of Public Service Company of Colorado to comply with other local, State and Federal laws and regulations. In addition, nothing in this letter shall be construed to be a waiver by EPA of any rights or remedies under the Clean Air Act.

Public Service Company of Colorado may assert a claim of business confidentiality regarding any portion of the information submitted in response to this request (except for emission data). (See 40 CFR 2.201 *et seq.*) Failure to assert such a claim will render all submitted information available to the public without further notice. If you believe the disclosure of specific information would reveal a trade secret, clearly identify such information.

The requirements of this letter are not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §3501 *et seq.*

If you have any questions, please contact Albion Carlson of my staff concerning this matter at 303-312-7076.

Sincerely,


Carol Kushin
Assistant Regional Administrator,
Office of Enforcement, Compliance, &
Environmental Justice

Enclosures: 1) Instructions and Definitions
 2) Statement of Certification
 3) Data Charts for Big Stone Power Plant

cc: Margie Perkins, Director
 Air Pollution Control Division
 Colorado Department of Public Health and Environment

William Woodard
Public Service Company of Colorado Pawnee Station



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ENCLOSURE 1



INSTRUCTIONS

- 1) Provide a separate narrative response to each question and subpart of a question set forth in the Information Request.
- 2) Precede each answer with the number of the question to which it corresponds and at the end of each answer identify the person(s) that provided information that was used or considered in responding to that question, as well as each person that was consulted in the preparation of that response.
- 3) Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the question to which it corresponds.
- 4) When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
- 5) Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess such information.

DEFINITIONS

All terms used in this Request for Information will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C. § 7401, C.F.R. Part 52 (which incorporates the federally-approved Stated Implementation Plan), or other Clean Air Act implementing regulations. Reference is made to the EPA regulatory provisions only; however, you should apply the applicable federally-approved state provisions when appropriate. Definitional clarification is specified below.

- 1) The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these. If in computer format or memory, each such document shall be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy should also include attachments to or enclosures with any document.



- 2) The term "Capital Appropriation Requests" shall mean the documents used by station personnel that serve the purpose of describing capital projects for equipment and process changes when seeking management approval for a planned expenditure at the station. These documents are also known as capital improvement requests, authorizations for expenditure, work order records, or other similar names.
- 3) The term "Steam Generating Unit" shall have the same meaning as defined at 40 C.F.R. 60.41(b)
- 4) The term "Coal-Fired Boiler Unit" shall mean all equipment used for the purpose of generating electricity including but not limited to coal handling facilities, boilers, ductwork, stacks, turbines, generators, and all ancillary equipment.
- 5) The term "PSD/NSR" shall mean the Prevention of Significant Deterioration and the New Source Review preconstruction permitting programs established at 40 C.F.R. 51 and 52 and any respective program established under a state implementation plan.
- 6) The term "NSPS" shall mean the Standards of Performance for New Stationary Sources promulgated at 40 C.F.R. Part 60.
- 7) The term "MWHR" shall mean megawatt hours of electrical energy.
- 8) The term "KWHR" shall mean kilowatt hours of electrical energy.
- 9) The term "BTU" shall mean the British Thermal Unit of heat.



ENCLOSURE 2



STATEMENT OF CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all Enclosures and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

(Signature)

(Title)

(Date)



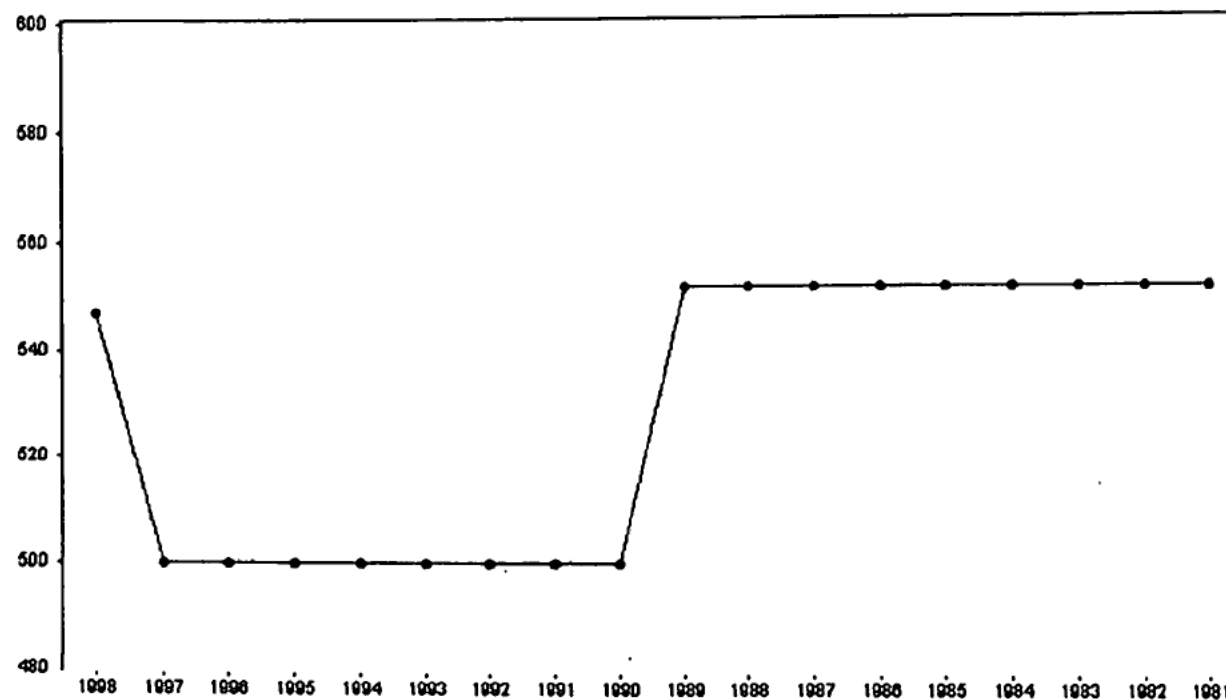
ENCLOSURE 3



return to datasheet / change settings

■ Nameplate or
Gross Capability
(MW) (402 05)
(MW)

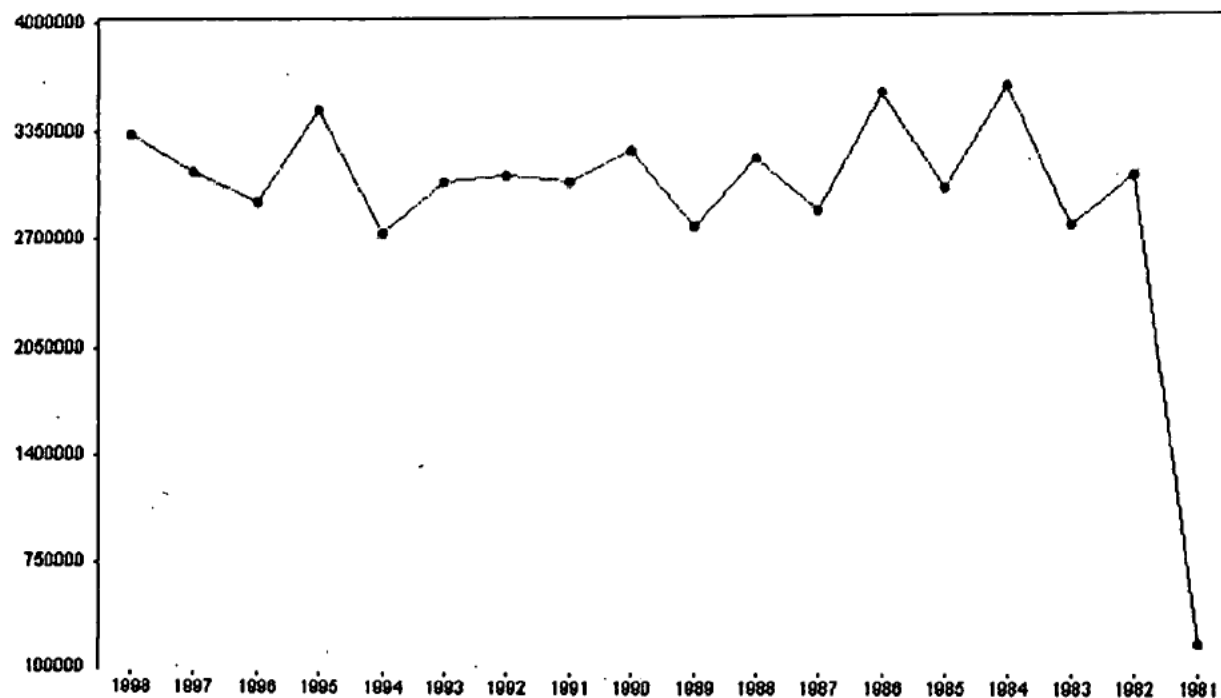
PAWNEE (ST)



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■ Net Generation
(MWh) (402 12)
(MWh)

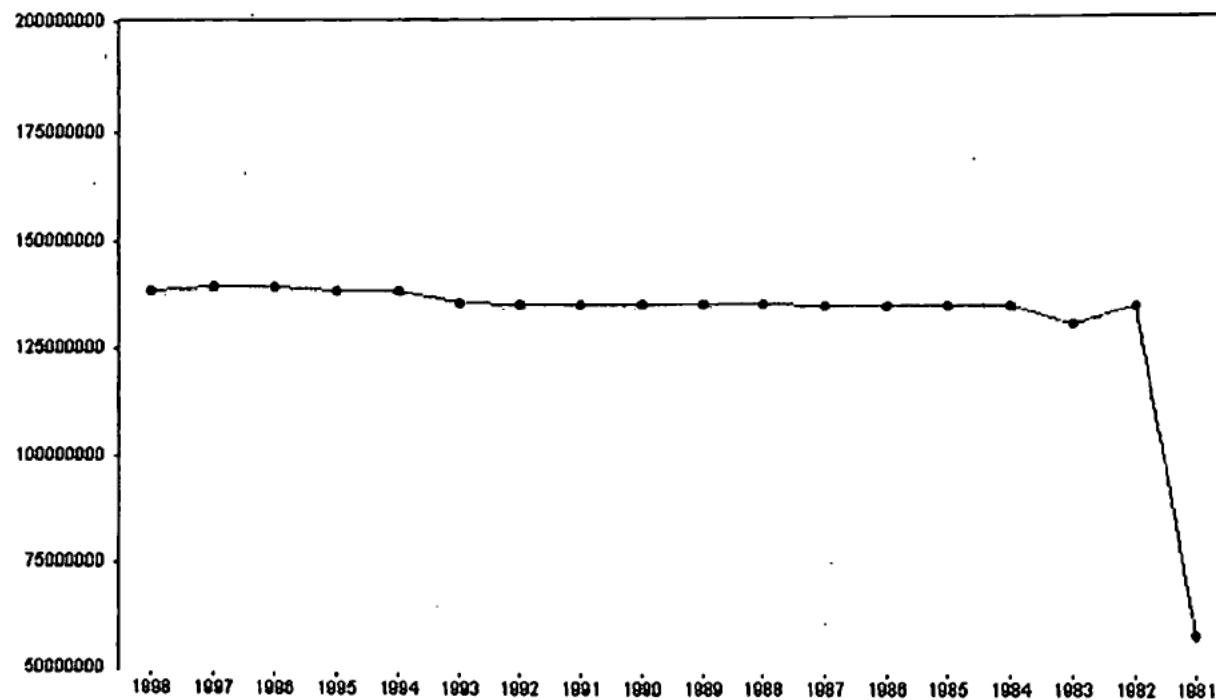
PAWNEE (ST)



[● return to datasheet](#) / [● change settings](#)

■ Tot Capitalized
Struct/Improv
Cost (402 14) (\$)

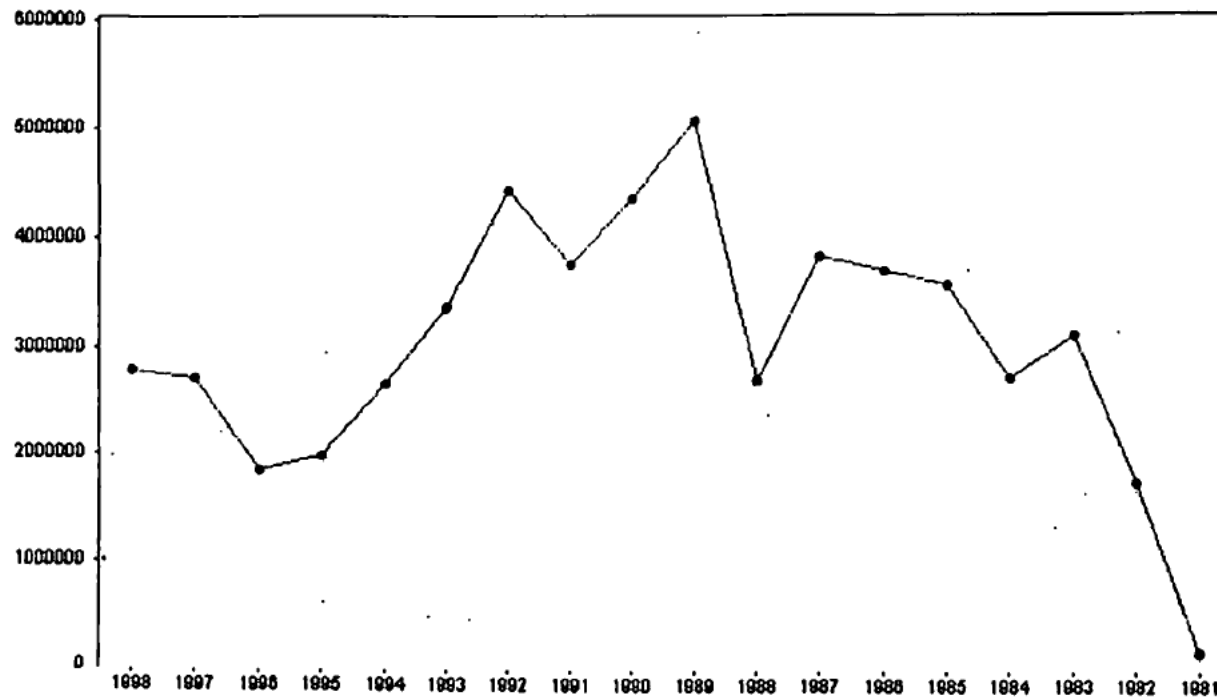
PAWNEE (ST)



● return to datasheet, / ● change settings

■ Maint Exp-Annual
Boiler Costs (402
30) (\$)

PAWNEE (ST)





sagewave™ Powered by SageMaker

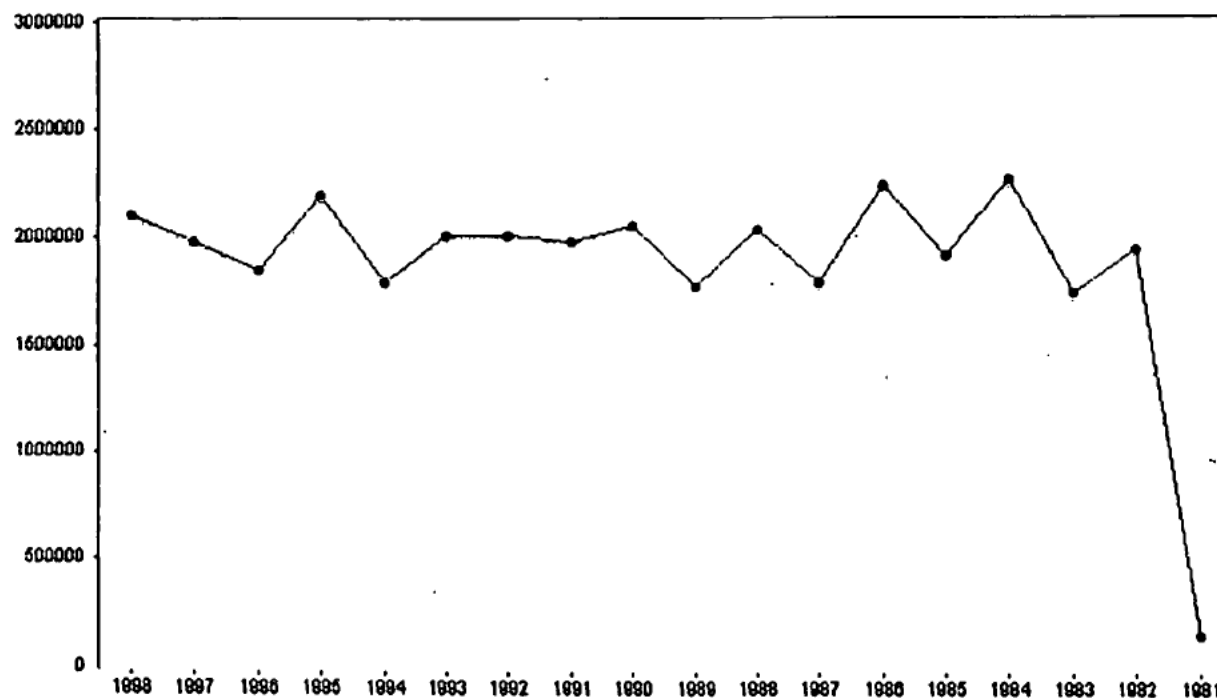
[preferences](#) | [contact](#) | [log off](#)

**N.A. ENERGY
BUSINESS DIRECTORY**

● [return to datasheet](#) / ● [change settings](#)

■ Annual Coal
Burned (T) (402
37) (tons)

PAWNEE (ST)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

JUN 4 2010

Ref: 8ENF-L

Ignacia S. Moreno

Assistant Attorney General

United States Department of Justice

Environment and Natural Resources Division

P.O. Box 7611

Washington D.C. 20044-7611

(b) (5) AWP ACC

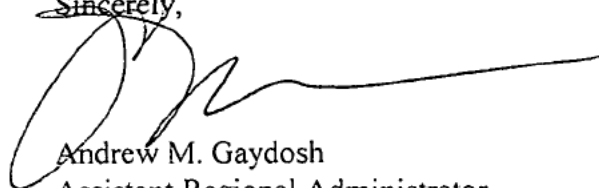


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(b) (5) AWP ACC

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Sincerely,

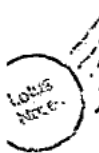
A handwritten signature in black ink, appearing to be "Andrew M. Gaydosh".

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

cc:

(b) (5) AWP ACC

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Ron
Rutherford/NEIC/USEPA/US
08/22/2006 08:18 AM

To Jim Eppers/ENF/R8/USEPA/US@EPA
cc
bcc
Subject Re: Xcel Case

(b) (5) AWP ACC

Ronald L. Rutherford
OECA/OCE/Air Enforcement Division
Western Field Office
12345 W. Alameda Parkway, Suite 214
Denver, Colorado 80228
Office: 303-236-9515
Fax: 303-236-9514
Email: rutherford.ron@epa.gov

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Jim Eppers/ENF/R8/USEPA/US

Jim
Eppers/ENF/R8/USEPA/US
08/22/2006 08:09 AM

To Ron Rutherford/NEIC/USEPA/US@EPA
cc
Subject Re: Xcel Case

CONFIDENTIAL; DO NOT RELEASE

(b) (5) AWP ACC

Jim

Ron Rutherford/NEIC/USEPA/US



Ron
Rutherford/NEIC/USEPA/US

To Jim Eppers/ENF/R8/USEPA/US@EPA



08/22/2006 07:15 AM

cc
Subject Re: Xcel Case

(b) (5) AWP ACC

Ronald L. Rutherford
OECA/OCE/Air Enforcement Division
Western Field Office
12345 W. Alameda Parkway, Suite 214
Denver, Colorado 80228
Office: 303-236-9515
Fax: 303-236-9514
Email: rutherford.ron@epa.gov

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<http://www.epa.gov/compliance/complaints/index.html>

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Jim Eppers/ENF/R8/USEPA/US

Jim
Eppers/ENF/R8/USEPA/US
08/21/2006 03:47 PM

To Ron Rutherford/NEIC/USEPA/US@EPA
cc
Subject Xcel Case

Confidential; Do not release

Hi Ron,

(b) (5) AWP ACC

ou sir.

Jim

Carol
Smith/ENF/R8/USEPA/US
01/25/2007 04:26 PM

To Jim Eppers/ENF/R8/USEPA/US@EPA
cc
bcc
Subject Fw: Xcel Energy's Pawnee Power Plant

FYI

----- Forwarded by Carol Smith/ENF/R8/USEPA/US on 01/25/2007 04:26 PM -----



Douglas
Latimer/P2/R8/USEPA/US
01/25/2007 03:21 PM

To Cynthia Cody/P2/R8/USEPA/US@EPA, Martin
Hestmark/ENF/R8/USEPA/US@EPA, Albion
Carlson/ENF/R8/USEPA/US@EPA, Brenda
South/P2/R8/USEPA/US@EPA, Joshua
Rickard/ENF/R8/USEPA/US@EPA, Carol
Smith/ENF/R8/USEPA/US@EPA

cc

Subject Fw: Xcel Energy's Pawnee Power Plant

(b) (5) AWP ACC

----- Forwarded by Douglas Latimer/P2/R8/USEPA/US on 01/25/2007 03:19 PM -----



Adam
Kushner/DC/USEPA/US
01/25/2007 03:12 PM

To Douglas Latimer/P2/R8/USEPA/US@EPA
cc

Subject Re: Xcel Energy's Pawnee Power Plant

(b) (5) AWP ACC

Adam M. Kushner
Director
Air Enforcement Division
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Telephone: 202-564-7979
Facsimile: 202-564-0015

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Douglas Latimer/P2/R8/USEPA/US



Douglas
Latimer/P2/R8/USEPA/US
01/25/2007 03:20 PM

To Adam Kushner/DC/USEPA/US@EPA.
cc
Subject Xcel Energy's Pawnee Power Plant

Adam,

(b) (5) AWP ACC

Regards,
Doug

Douglas A. Latimer, P.E.
Senior Environmental Engineer
Air and Radiation Program
US EPA Region 8 (8P-AR)
1595 Wynkoop Street
Denver, Colorado 80202
303.312.6934; fax: 303.312.6064

Toward the national goal: "Prevention of any future, and remedying of any existing, man-made air pollution."

1 23562AMG

2

3

4 EXCEL ENERGY NOV CONFERERNC MEETING

5

6 EPA REGINATE OFFICE

7 999 18th Street

8 8RC-RHC

9 2nd Floor Conference Center

10 Wetlands Room

11 Denver, Colorado 80202

12

13 The Proceedings commenced on:

14 Tuesday, September 24, 2002 at 2:30 p.m.

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